

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ARTHUR J. JONES, JR.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:18cv84-KS-MTP

CITY OF HATTIESBURG,
Detective Sergeant NEAL ROCKHOLD, Individually
and as the agent of the Defendant, City of Hattiesburg

DEFENDANTS

DEFENDANTS' MOTION TO STRIKE EXHIBITS

Defendants, City of Hattiesburg and Neal Rockhold, file this Motion to Strike Exhibits 22 [Doc. 158-21] and 23 [Doc. 158-22]¹ as follows:

- 1) Plaintiff's response in opposition to Defendants' motion for summary judgment attaches as exhibits affidavits by attorneys Tom Fortner [Doc. 158-21] and Jack Denton [Doc. 158-22]. Defendants request the Court strike these exhibits for several reasons.
- 2) Fortner and Denton's affidavits constitute impermissible expert opinions, and neither have been designated as experts in this case. Fortner's testimony regarding his (1) opinion of the number of Hattiesburg's criminal charges for hindering prosecution, (2) opinion regarding the absence of probable cause in other cases, and (3) opinion regarding customs and practices are all areas beyond a layman's understanding and constitute expert opinions, albeit improper and inadmissible expert opinions. Similarly, Denton's (1) opinion Hattiesburg Police Department "may" be excessively charging individuals with hindering prosecution; (2) opinions regarding the requirements of Miss. Code Ann. § 97-9-105 and § 97-9-103; and (3) opinion "a lot of the

¹ Plaintiff's Response omits Exhibit 19, with Exhibits 22 and 23 being filed electronically as indicated above.

facts...do not meet the definitions” are expert opinions beyond a layman’s understanding. Such testimony is required to be properly designated pursuant to F.R.C.P. 26.

3) The statements within Fortner and Denton’s affidavits are unsupported conclusory statements and legal conclusions that should be stricken. *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992)(stating, “[c]onclusory assertions cannot be used in an affidavit on summary judgment.”); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994); *Shaffer v. Williams*, 794 F.2d 1030, 1033 (5th Cir.1986); *Galindo v. Precision American Corp.*, 754 F.2d 1212, 1216 (5th Cir.1985); *Evans v. Technologies Applications and Serv. Co.*, 80 F.3d 954, 962 (4th Cir. 1996)(affirming district court’s ruling striking portions of affidavit submitted by plaintiff in opposition to summary judgment where portions of affidavit included self-serving and unsupported assertions without objective corroboration; statements not based on personal knowledge; and statements that were hearsay, irrelevant, or conclusory); and *Cockrell v. Memphis-Shelby County Airport Auth.*, 2:95CV016-B-B, 1996 WL 33370660, at *2 (N.D. Miss. June 4, 1996)(stating, “[t]heir affidavit contains vague legal conclusions and cannot oppose a properly supported summary judgment motion.”)

4) The opinions within these affidavits lack “objective corroboration” and do not state facts sufficient to support the conclusions.

5) Defendants request the Court dispense with a brief on this relatively straightforward issue as Defendants’ authorities are contained and referenced herein.

WHEREFORE Defendants request the Court strike Plaintiff’s Exhibits 22 [Doc. 158-21] and 23 [Doc. 158-22].

RESPECTFULLY SUBMITTED on this 10th day of December, 2020.

/s/ Lane Dossett

L. CLARK HICKS, JR., MSB NO. 8963

R. LANE DOSSETT, MSB NO. 102927

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CERTIFICATE OF SERVICE

I, undersigned counsel, do hereby certify that I have this day electronically filed the foregoing ***Defendants' Motion to Strike Exhibits*** to the Clerk of the Court using the ECF system, which sent notification of such filing to all registered users, including:

Tim C. Holleman, Esq. (MSB No. 2526)
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THIS the 10th day of December, 2020.

/s/ Lane Dossett

L. CLARK HICKS, JR., MSB NO. 8963

R. LANE DOSSETT, MSB NO. 102927

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